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SENATE BILL NO. 1335

Offered January 21, 2005

A *BILL to amend and reenact §§ 15.2-2108, 56-468.1, 56-484.12, 58.1-3815, and 58.1-3816.2 of the Code of Virginia, to amend the Code of Virginia by adding in Chapter 13 of Title 51.5 a section numbered 51.5-115, by adding in Title 58.1 a chapter numbered 6.2 consisting of sections numbered 58.1-645 through 58.1-662 and by adding in Chapter 17 of Title 58.1 an article numbered 7 consisting of a section numbered 58.1-1730, and to repeal §§ 56-484.4, 56-484.5, 56-484.6, 58.1-3812, 58.1-3813.1, and § 58.1-3818.1 through 58.1-3818.7 of the Code of Virginia and to repeal the third enactment clause of Chapter 858 of the 1972 Acts of Assembly, relating to the taxation of communications services; penalties.*

Patrons—O'Brien and Hanger

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-2108, 56-468.1, 56-484.12, 58.1-3815, and 58.1-3816.2 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Chapter 13 of Title 51.5 a section numbered 51.5-115, by adding in Title 58.1 a chapter numbered 6.2 consisting of sections numbered 58.1-645 through 58.1-662 and by adding in Chapter 17 of Title 58.1 an article numbered 7 consisting of a section numbered 58.1-1730, as follows:

§ 15.2-2108. Licensing, etc., and regulation of cable television systems.

A. The words "cable television system" as used in this section shall mean any facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, except that such definition shall not include (i) a system that serves fewer than twenty20 subscribers; (ii) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (iii) a facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control, or management, unless such facility or facilities use any public right-of-way; (iv) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, 47 U.S.C. § 201 et seq., except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers; (v) any facilities of any electric utility used solely for operating its electric systems; or (vi) any portion of a system that serves fewer than fifty50 subscribers in any locality, where such portion is a part of a larger system franchised in an adjacent locality.

The words "cable service" as used in this section mean the one-way transmission to subscribers of (i) video programming; or (ii) other programming service, and subscriber interaction, if any, which is required for the selection of such video programming or other programming service.

The words "cable television operator" as used in this section mean a person who (i) provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system; or (ii) otherwise controls or is responsible for, through any arrangement, the management and operation of such cable system, whether or not he has entered into a franchise agreement with a locality.

B. A locality may grant a license or franchise, or issue a certificate of public convenience and necessity to no more than one cable television system, and impose a fee thereon. However, a governing body shall have the authority to award additional licenses, franchises or certificates of public convenience as it deems appropriate, if such governing body finds that the public welfare will be enhanced by such awards after a public hearing at which testimony is heard concerning the economic consideration, the impact on private property rights, the impact on public convenience, the public need and potential benefit, and such other factors as are relevant.

C. No such governing body shall grant any overlapping licenses, franchises or certificates of public convenience for cable service within its jurisdiction on terms or conditions more favorable or less burdensome than those in any existing license, franchise or certificate of public convenience within such locality. The prohibitions of the foregoing sentence shall not apply when the area in which the overlapping license, franchise or certificate of public convenience is being sought, is not actually being served by any existing cable service provider holding a license, franchise or certificate of public convenience for such area. As used in this subsection, the term "actually being served" means that cable service is actually available to subscribers to such extent that the only act remaining in order to provide

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59 cable service is the physical connection to the individual subscriber location as of ~~fifteen~~15 days prior to
60 any subsequent application for a franchise.

61 D. The governing body may regulate such systems, including the establishment of fees and rates, the
62 assignment of channels for public use, the operation of such channels assigned for public use, and the
63 placement of restrictions or conditions on the scope of the business activities engaged in by such
64 systems with regard to the sale, lease, rental or repair of television receivers or repair of video cassette
65 and disc recorders and players, or provide for such regulation and operation by such agents as the
66 governing body may direct. The owner or operator of any cable television system shall not be required
67 to pay the cost of interconnecting such cable television systems between localities.

68 E. The grant of authority by this section to localities to regulate cable television systems, including
69 regulations that displace or limit competition by or among persons owning or operating such systems,
70 has been and continues to be based on the policy of the Commonwealth to provide for the adequate,
71 economical, and efficient delivery of such systems to the consuming public, to protect the public from
72 excessive prices and unfair competition, and to prevent the owners and operators of such systems from
73 obtaining an unfair competitive advantage by reason of the license, franchise or certificate of
74 convenience over businesses that sell, lease, rent or repair television receivers or repair video cassette
75 and disc recorders and players. No locality may regulate cable television systems by regulations
76 inconsistent with either laws of the Commonwealth or federal law relating to cable television operations.

77 F. Localities may by ordinance exercise all the regulatory powers over cable television systems
78 granted by the Cable Television Consumer Protection and Competition Act of 1992 (P.L. 102-385,
79 1992). These regulatory powers shall include the authority (i) to enforce customer service standards in
80 accordance with the Act, (ii) to enforce more stringent standards as agreed upon by the cable television
81 system operator through the terms of the franchise, and (iii) to regulate the rates for basic cable service
82 in accordance with the Act.

83 G. ~~To the extent that If a franchised cable television operator has been authorized to useuses the~~
84 ~~public rights-of-way in a locality and is obligated to pay a franchise fee to such locality, such the~~ cable
85 ~~television operator shall not be subject to any occupancy, use, or similar fee, with respect to its use of~~
86 ~~such rights-of-way, by the locality or the Commonwealth Transportation Board the Public Rights-of-Way~~
87 ~~Use Fee as provided in § 56-468.1. The Commonwealth Transportation Board may charge, on a~~
88 ~~nondiscriminatory basis, fees to recover the approximate actual cost incurred for the issuance of a permit~~
89 ~~to perform work within the rights-of-way and for inspections to ensure compliance with the conditions~~
90 ~~of the permit, as such fees shall be established by regulations adopted under the Administrative Process~~
91 ~~Act. A locality may charge, on a nondiscriminatory basis, fees to recover the approximate actual cost~~
92 ~~incurred for the issuance of a permit to perform work within the rights-of-way and for inspections to~~
93 ~~ensure compliance with the conditions of the permit, as such fees existed on February 1, 1997, or as~~
94 ~~subsequently modified by ordinance. The limitation as to fees charged for the use of the public~~
95 ~~rights-of-way shall not be applicable to pole attachments and conduit occupancy agreements between a~~
96 ~~franchise cable television operator and a locality or its authority or commission, which permits such~~
97 ~~operator to use the public poles or conduits.~~

98 H. *No new or renegotiated franchise agreement shall include a franchise fee on or after July 1,*
99 *2006, as long as cable television services are subject to the Virginia Communications Sales and Use*
100 *Tax (Chapter 6.2 of Title 58.1). Franchise fee as used in this subsection shall have the same meaning as*
101 *that term is defined in 47 U.S.C. § 542(g).*

102 1. *All cable television franchise agreements in effect as of July 1, 2006 shall remain in full force and*
103 *effect, and nothing in this section shall impair any obligation of any such agreement; provided, however,*
104 *that any requirement in such an existing agreement for payment of a monetary franchise fee based on*
105 *the gross receipts of the franchisee shall be fulfilled in the manner specified in subdivision 2, below.*

106 2. *Each cable television operator owing monetary payments for franchise fees, until the expiration of*
107 *one or more such existing franchises, shall include with its monthly remittance of the Communications*
108 *Sales and Use Tax a report, by locality, of the amounts due for franchise fees accruing during that*
109 *month. The Department of Taxation shall then distribute to each county, city or town the amount*
110 *reported by each locality's franchisee(s). Such monthly distributions shall be paid from the*
111 *Communications Sales and Use Tax Trust Fund before making the other calculations and distributions*
112 *required by § 58.1-662. Until distributed to the individual localities, such amounts shall be deemed to be*
113 *held in trust for their respective accounts.*

114 3. *A locality's acceptance of any payment under subdivision 2 shall not prejudice any rights of the*
115 *locality under the applicable franchise agreement (i) to audit or demand adjustment of the amounts*
116 *reported by its franchisee, or (ii) to enforce the provisions of the franchise by any lawful administrative*
117 *or judicial means.*

118 § 51.5-115. *Telecommunications relay service; standards; funding.*

119 A. *As used in this section, unless the context requires otherwise, the term:*

120 *"Operation" means those functions reasonably and directly necessary for the provision of*

telecommunications relay service, including contract procurement and administration, and public education and information regarding telecommunications relay service.

"Telecommunications relay service" means a facility whereby a person who has a hearing or speech disability using a text telephone and a person using a conventional telephone device can communicate with each other via telephone.

"VITA" means the Virginia Information Technologies Agency.

"Voice carry over" means technology that will enable a deaf or hard-of-hearing person with good speech to use his voice, instead of the text telephone, to communicate back to the hearing person.

B. The Department, with the assistance of VITA, shall be responsible for the provision and operation of telecommunications relay service for all text telephones within the Commonwealth. Telecommunications relay service shall include at a minimum:

1. Twenty-four-hour-a-day, seven-day-a-week statewide access with no limitations or restrictions that are not applicable to voice users of the telephone network;

2. An answer rate that ensures that at least 85 percent of the incoming calls are operator-answered within 20 seconds and at least 99 percent of incoming calls answered within 60 seconds;

3. Technological advances, including the capability of voice carryover; and

4. Adequate facilities and personnel to ensure that calls are interpreted accurately; notwithstanding this provision, unless miscommunication on a call is caused by the willful misconduct of the telecommunications relay service provider, liability of the telecommunications relay service provider shall be limited to the charges imposed on users for the call.

C. All costs associated with the establishment and operation of the telecommunications relay service, including but not limited to personnel costs incurred by the Department for administering the service, shall be funded through a distribution made to the Department in accordance with the provisions of § 58.1-662 and any money transferred from the Department as provided for in subsection D of this section. Such distributions, when appropriate, may be zero. The distributions shall be based on projected costs and special interim distributions may be made if actual costs exceed projections. No distribution shall be made and no funds shall be expended to support any activities that are not reasonably and directly necessary for the operation of the telecommunications relay service as defined in this section.

D. The Department shall transfer any funds received from the National Exchange Carrier Association, or other funding sources for purposes of operating telecommunications relay services, to VITA for costs associated with telecommunications relay service.

§ 56-468.1. Public Rights-of-Way Use Fee.

A. As used in this article:

"Access lines" are defined to include residence and business telephone lines and other switched ~~common~~ (packet or circuit) lines connecting the customer premises to the ~~end office switch~~, public switched telephone network for the transmission of outgoing voice-grade telecommunications services. Centrex, PBX, or other multi-station telecommunications services will incur a Public Rights-of-Way Use Fee on every line or trunk (Network Access Registrar or PBX trunk) that allows simultaneous unrestricted outward dialing to the public switched network. ISDN Primary Rate Interface services will be charged five Public Rights-of-Way Use Fees for every ISDN Primary Rate Interface network facility established by the customer. Other channelized services in which each voice grade channel is controlled by the telecommunications provider shall be charged one fee for each line that allows simultaneous unrestricted outward dialing to the public switched telephone network. Access lines do not include local, state, and federal government lines; access lines used to provide service to users as part of the Virginia Universal Service Plan; interstate and intrastate dedicated WATS lines; special access lines; off-premises extensions; official lines internally provided and used by providers of telecommunications service for administrative, testing, intercept, and verification purposes; and commercial mobile radio service lines.

"Centrex" means a business telephone service offered by a local exchange company from a local central office; a normal single line telephone service with added custom calling features including but not limited to intercom, call forwarding, and call transfer.

"Certificated provider of telecommunications service" means a public service corporation or locality holding a certificate issued by the State Corporation Commission to provide local exchange or interexchange telephone service.

"Cable television operator" has the same meaning as contained in § 15.2-2108.

"ISDN Primary Rate Interface" means digital communications service containing 24 64,000 bits per second channels.

"Locality" has the same meaning as contained in § 15.2-102.

"Network Access Register" means a central office register associated with Centrex service that is required in order to complete a call involving access to the public switched telephone network outside the confines of that Centrex company. Network Access Register may be incoming, outgoing, or two-way.

"New installation of telecommunications facilities" or "new installation" includes the construction of

new pole lines and new conduit systems, and the burying of new cables in existing public rights-of-way. New installation does not include adding new cables to existing pole lines and conduit systems.

"PBX" means public branch exchange and is telephone switching equipment owned by the customer and located on the customer's premises.

"PBX trunk" means a connection of the customer's PBX switch to the central office.

"Provider of local telecommunications service" means a public service corporation or locality holding a certificate issued by the State Corporation Commission to provide local exchange telephone service and any other person that provides local telephone services to the public for a fee, other than a CMRS provider as that term is defined in § 56-484.12.

"Provider of telecommunications service" means a public service corporation or locality holding a certificate issued by the State Corporation Commission to provide local exchange or interexchange telephone service to the public for a fee and any other person that provides local or long distance telephone services to the public for a fee, other than a CMRS provider as that term is defined in § 56-484.12.

"Public highway" means, for purposes of computing the Public Rights-of-Way Use Fee, the centerline mileage of highways and streets which are part of the State Highway System as defined in § 33.1-25, the secondary system of highways as defined in § 33.1-67, the highways of those cities and certain towns defined in § 33.1-41.1 and the highways and streets maintained and operated by counties which have withdrawn or elect to withdraw from the secondary system of state highways under the provisions of § 11 of Chapter 415 of the Acts of Assembly of 1932 and which have not elected to return.

"Subscriber" means a person who receives broadcast programming distributed by a cable television system and does not further distribute it.

B. 1. Notwithstanding any other provisions of law, there is hereby established a Public Rights-of-Way Use Fee to replace any and all fees of general application (except for zoning, subdivision, site plan and comprehensive plan fees of general application) otherwise chargeable to a ~~certificated~~ provider of telecommunications service by the Commonwealth Transportation Board or a locality in connection with a permit for such occupation and use granted in accordance with § 56-458 or § 56-462. Cities and towns whose public streets and roads are not maintained by the Virginia Department of Transportation, and any county that has withdrawn or elects to withdraw from the secondary system of state highways under the provisions of § 11 of Chapter 415 of the Acts of Assembly of 1932, may impose the Public Rights-of-Way Use Fee *on providers of local telecommunications service* only by local ordinance. Localities, their authorities or commissions, and the Commonwealth Transportation Board may allow ~~certificated~~ providers of telecommunications services and cable television operators to use their electric poles or electric conduits in exchange for payment of a fee.

2. The Public Rights-of-Way Use Fee established by this section is hereby imposed on all cable television operators that use the public-rights-of-way.

C. The amount of the Public Rights-of-Way Use Fee shall be calculated annually by the Department of Transportation (VDOT), based on the calculations described in subsection D of this section. In no year shall the amount of the fee be less than ~~fifty cents~~ \$0.50 per access line per month.

D. The annual rate of the Public Rights-of-Way Use Fee shall be calculated by multiplying the number of public highway miles in the Commonwealth by a highway mileage rate (as defined in subsection E of this section), and by adding the number of feet of new installations in the Commonwealth (multiplied by ~~one dollar~~ \$1 per foot), and dividing this sum by the total number of access lines in the Commonwealth. The monthly rate shall be this annual rate divided by ~~twelve~~ 12.

E. The annual multiplier per mile is \$250 from July 1, 1998, through June 30, 1999; \$300 per mile for the year July 1, 1999, through June 30, 2000; \$350 per mile for the year July 1, 2000, through June 30, 2001; and \$425 per mile beginning July 1, 2001 and thereafter.

F. The data used for the calculation in subsection D shall be based on the following information and schedule: (i) all ~~certificated~~ providers of telecommunications services shall remit to VDOT by December 1 of each year data indicating the number of feet of new installations made during the one-year period ending September 30 of that year, which shall be auditable by affected localities, and the number of access lines as of September 30 of that year, which shall be auditable by affected localities; and (ii) the public highway mileage from the most recently published VDOT report. By the following January 15, VDOT shall calculate the Public Rights-of-Way Use Fee to be used in the fiscal year beginning the next ensuing July 1 and report it to all affected localities and ~~certificated~~ providers of local ~~exchange telephone~~ telecommunications services.

G. A ~~certificated~~ provider of local ~~exchange telephone~~ telecommunications service shall collect the Public Rights-of-Way Use Fee on a per access line basis and the cable television operator shall collect the Public Rights-of-Way Use Fee on a per subscriber basis by adding the fee to each ultimate end user's monthly bill for local ~~exchange telephone~~ telecommunications service or cable service. A company

providing both local telecommunications service and cable television service to the same ultimate end user may collect only one Public Rights-of-Way Use Fee from that ultimate end user based on (i) the local telecommunications service if the locality in which the ultimate end user resides has imposed a Public Rights-of-Way Use Fee on local telecommunications service or (ii) cable television service if the locality in which the subscriber resides has not imposed a Public Rights-of-Way Use Fee on local telecommunications service. The Public Rights-of-Way Use Fee shall, when billed, be stated as a distinct item separate and apart from the monthly charge for local exchange telephone telecommunications service and the cable television service. Until the ultimate end user pays the Public Rights-of-Way Use Fee to the local exchange service telecommunications provider, the Public Rights-of-Way Use Fee shall constitute a debt of the consumer to the locality, ~~or~~ VDOT, or the Department of Taxation, as may be applicable. If any ultimate end user or subscriber refuses to pay the Public Rights-of-Way Use Fee, the local exchange telecommunications service provider or cable television operator shall notify the locality, ~~or~~ VDOT, or the Department of Taxation, as appropriate. After the consumer pays the Public Rights-of-Way Use Fee to the local exchange service provider, such fee collected shall be deemed to be held in trust by the local exchange service provider until remitted to the locality or VDOT. All fees collected in accordance with the provisions of this section shall be deemed to be held in trust by the local telecommunications service provider and the cable television operator until remitted to the locality, VDOT or the Department of Taxation, as applicable.

H. Within two months after the end of each calendar quarter, each ~~certificated~~ provider of local exchange telephone telecommunications service shall remit the amount of Public Rights-of-Way Use Fees it has billed to ultimate end users during such preceding quarter, as follows:

1. The ~~certificated~~ provider of local exchange telephone telecommunications service shall remit directly to the applicable locality all Public Rights-of-Way Use Fees billed in (i) cities; (ii) towns whose public streets and roads are not maintained by VDOT; and (iii) any county that has withdrawn or elects to withdraw from the secondary system of state highways under the provisions of § 11 of Chapter 415 of the Acts of Assembly of 1932 and that has elected not to return, provided, however, that such counties shall use a minimum of ~~ten~~10 percent of the Public Rights-of-Way Use Fees they receive for transportation construction or maintenance purposes. Any city currently subject to § 15.2-3530 shall use a minimum of ~~ninety~~90 percent of the Public Rights-of-Way Use Fees it receives for transportation construction or maintenance purposes.

2. The Public Rights-of-Way Use Fees billed in all other counties shall be remitted by each ~~certificated~~ provider of local exchange telephone telecommunications service to VDOT. VDOT shall allocate the total amount received from ~~certificated~~ providers to the construction improvement program of the secondary system of state highways. Within such allocation to the secondary system, VDOT shall apportion the amounts so received among the several counties, other than those described in clause (iii) of subdivision 1, on the basis of population, with each county being credited a share of the total equal to the proportion that its population bears to the total population of all such counties. For purposes of this section the term "population" shall mean either population according to the latest United States census or the latest population estimate of the Weldon Cooper Center for Public Service of the University of Virginia, whichever is more recent. Such allocation and apportionment of Public Rights-of-Way Use Fees shall be in addition to, and not in lieu of, any other allocation of funds to such secondary system and apportionment to counties thereof provided by law.

I. The Public Rights-of-Way Use Fee billed by a cable television operator shall be remitted to the Department of Taxation for deposit into the Communication Sales and Use Tax Trust Fund by the twentieth day of the month following the billing of the fee.

J. Any locality with a franchise agreement, ordinance implementing a franchise agreement or other form of consent allowing the use of the public rights-of-way by a provider of local telecommunications service, existing prior to July 1, 1998, or any city or town with an ordinance or code section imposing a franchise fee or charge on a provider of local telecommunications service in effect as of February 1, 1997, may elect to continue enforcing such existing franchise, ordinance or code section or other form of consent in lieu of receiving the Public Rights-of-Way Use Fee; provided, however, that such city or town does not (i) discriminate among telecommunications service providers and (ii) adopt any additional rights-of-way management practices that do not comply with §§ 56-458 C and 56-462 C. The Public Rights-of-Way Use Fee shall not be imposed in any such locality.

Any locality electing to adopt the Public Rights-of-Way Use Fee by ordinance shall notify all affected ~~certificated~~ providers of local exchange telephone telecommunications service no later than March 15 preceding the fiscal year. Such notice shall be in writing and sent by certified mail from such locality to the registered agent of the affected ~~certificated~~ provider or providers of local exchange telephone telecommunications service. For localities adopting the Public Rights-of-Way Use Fee by ordinance in 1998, collection of the fee shall begin on the first day of the month occurring ~~ninety~~90 days after receipt of notice as required by this subsection.

§ 56-484.12. Definitions.

As used in this article, unless the context requires a different meaning:

"Automatic location identification" or "ALI" means a telecommunications network capability that enables the automatic display of information defining the geographical location of the telephone used to place a wireless Enhanced 9-1-1 call.

"Automatic number identification" or "ANI" means a telecommunications network capability that enables the automatic display of the telephone number used to place a wireless Enhanced 9-1-1 call.

"Board" means the Wireless E-911 Services Board created pursuant to this article.

"Chief Information Officer" or "CIO" means the Chief Information Officer appointed pursuant to § 2.2-2005.

"Coordinator" means the Virginia Public Safety Communications Systems Coordinator employed by the Division.

"CMRS" means mobile telecommunications service as defined in the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. § 124, as amended.

"CMRS provider" means an entity authorized by the Federal Communications Commission to provide CMRS within the Commonwealth of Virginia.

"Division" means the Division of Public Safety Communications created in § 2.2-2031.

"Enhanced 9-1-1 service" or "E-911" means a service consisting of telephone network features and PSAPs provided for users of telephone systems enabling such users to reach a PSAP by dialing the digits "9-1-1." Such service automatically directs 9-1-1 emergency telephone calls to the appropriate PSAPs by selective routing based on the geographical location from which the emergency call originated and provides the capability for ANI and ALI features.

"FCC order" means Federal Communications Commission Order 94-102 (61 Federal Register 40348) and any other FCC order that affects the provision of E-911 service to CMRS customers.

"Local exchange carrier" means any public service company granted a certificate to furnish public utility service for the provision of local exchange telephone service pursuant to Chapter 10.1 (§ 56-265.1 et seq.) of Title 56.

"Place of primary use" has the meaning attributed in subsection M of § 58.1-3812 as defined in the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. §124, as amended .

"Public safety answering point" or PSAP means a facility (i) equipped and staffed on a 24-hour basis to receive and process E-911 calls or (ii) that intends to receive and process E-911 calls and has notified CMRS providers in its jurisdiction of its intention to receive and process such calls.

"Wireless E-911 CMRS costs" means all reasonable, direct recurring and nonrecurring capital costs and operating expenses incurred by CMRS providers in designing, upgrading, leasing, purchasing, programming, installing, testing, administering, delivering, or maintaining all necessary data, hardware, software and local exchange telephone service required to provide wireless E-911 service, which have been sworn to by an authorized agent of a CMRS provider.

"Wireless E-911 fund" means a dedicated fund consisting of all moneys collected pursuant to the wireless E-911 surcharge, as well as any additional funds otherwise allocated or donated to the wireless E-911 fund.

"Wireless E-911 PSAP costs" means all reasonable direct recurring and nonrecurring capital costs and operating expenses incurred by a PSAP in designing, upgrading, leasing, purchasing, programming, installing, testing, administering, delivering, or maintaining all necessary data, hardware, software and local exchange telephone service required to provide wireless E-911 service and direct personnel costs incurred in receiving and dispatching wireless E-911 emergency telephone calls, which have been sworn to by an authorized agent of the PSAP.

"Wireless E-911 service" means the E-911 service required to be provided by CMRS providers pursuant to the FCC order.

"Wireless E-911 surcharge" means a monthly fee of \$.75 billed by each CMRS provider and CMRS reseller on each CMRS number of a customer with a place of primary use in Virginia.

CHAPTER 6.2.

VIRGINIA COMMUNICATIONS SALES AND USE TAX

§ 58.1-645. Short title.

This chapter shall be known and may be cited as the "Virginia Communications Sales and Use Tax Act."

§ 58.1-646. Administration of chapter.

The Tax Commissioner shall administer and enforce the collection of the taxes and penalties imposed by this chapter.

§ 58.1-647. Definitions.

Terms used in this chapter shall have the same meanings as those used in Chapter 6 of this title, unless defined otherwise, as follows:

"Cable service" means the transmission of video, audio, or other programming service to customers

and the customer interaction, if any, required for the selection or use of any such programming service, regardless of whether the programming is transmitted over facilities owned or operated by the cable service provider or over facilities owned or operated by one or more other providers of communications services. The term "cable service" includes, but is not limited to, point-to-point and point-to-multipoint distribution services by which programming is transmitted or broadcast by microwave or other equipment directly to the customer's premises, but does not include direct-to-home satellite service, as defined in the Communications Act of 1934, 47 U.S.C. § 303v. The term includes basic, extended, premium, pay-per-view, digital, and music services.

"Call-by-call basis" means any method of charging for telecommunications services where the price is measured by individual calls.

"Coin-operated communications service" means a communications service paid for by means of inserting coins in a coin-operated telephone.

"Communications services" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including cable services, to a point or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for the transmission or conveyance. The term includes, but is not limited to, (i) the connection, movement, change, or termination of communications services; (ii) detailed billing of communications services; (iii) sale of directory listings in connection with a communications service; (iv) central office and custom calling features; (v) voice mail and other messaging services; and (vi) directory assistance.

"Communications services provider" means every person who provides communications services to customers in the Commonwealth and is or should be registered with the Department as a provider.

"Cost price" means the actual cost of the purchased communications service computed in the same manner as the sales price.

"Customer" means the person that contracts with the seller of communications services. If the person who utilizes the communications services is not the contracting party, the person who utilizes the services on his own behalf or on behalf of an entity is the customer of such service. "Customer" does not include a reseller of communications services or the mobile communications services of a serving carrier under an agreement to serve the customer outside the communications service provider's licensed service area.

"Customer channel termination point" means the location where the customer either inputs or receives the private communications service.

"Information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, using, or making available information via communications services for purposes other than the electronic transmission, conveyance or routing.

"Internet access service" means a service that enables users to access content, information, electronic mail, or other services offered over the Internet, and may also include access to proprietary content, information and other services as part of a package of services offered to users. "Internet access service" does not include telecommunications services, except to the extent telecommunications services are purchased, used, or sold by a provider of Internet access to provide Internet access.

"Place of primary use" means the street address representative of where the customer's use of the communications services primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile communications services, the place of primary use shall be within the licensed service area of the home service provider.

"Post-paid calling service" means the communications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, debit card or by a charge made to a telephone number which is not associated with the origination or termination of the communications service.

"Prepaid calling service" means the right to access exclusively communications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars which decrease in number with use.

"Private communications service" means a communications service that entitles the customer or user to exclusive or priority use of a communications channel or group of channels between or among channel termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services which are provided in connection with the use of such channel or channels.

"Retail sale" or a "sale at retail" means a sale of communications services for any purpose other than for resale or for use as a component part of or for the integration into communications services to be resold in the ordinary course of business.

"Sales price" means the total amount charged in money or other consideration by a communications

428 services provider for the sale of the right or privilege of using communications services in this
429 Commonwealth, including any property or other services that are part of the sale. The sales price of
430 communications services shall not be reduced by any separately identified components of the charge that
431 constitute expenses of the communications services provider, including but not limited to, sales taxes on
432 goods or services purchased by the communications services provider, property taxes, taxes measured by
433 net income, and universal-service fund fees.

434 "Service address" means, (i) the location of the telecommunications equipment to which a customer's
435 call is charged and from which the call originates or terminates, regardless of where the call is billed
436 or paid. If the location is not known in clause (i), "service address" means (ii) the origination point of
437 the signal of the telecommunications system or in information received by the seller from its service
438 provider, where the system used to transport such signals is not that of the seller. If the location is not
439 known in clauses (i) and (ii), the service address means (iii) the location of the customer's place of
440 primary use.

441 § 58.1-648. Imposition of sales tax; exemptions.

442 A. Beginning July 1, 2006, there is levied and imposed, in addition to all other taxes and fees of
443 every kind imposed by law, a sales or use tax on the customers of communications services in the
444 amount of five percent of the sales price of each communications service that is sourced to this
445 Commonwealth in accord with § 58.1-649.

446 B. The sales price on which the tax is levied shall not include charges for any of the following: (i)
447 an excise, sales or similar tax levied by the United States or any state or local government on the
448 purchase, sale, use or consumption of any communications service that is permitted or required to be
449 added to the sales price of such service, if the tax is stated separately; (ii) a fee or assessment levied by
450 the United States or any state or local government, including but not limited to, regulatory fees and
451 emergency telephone surcharges, that is required to be added to the price of service if the fee or
452 assessment is separately stated; (iii) coin-operated communications services; (iv) sale or recharge of a
453 prepaid calling service; (v) provision of air-to-ground radiotelephone services, as that term is defined in
454 47 C.F.R. § 22.99; (vi) a communications services provider's internal use of communications services in
455 connection with its business of providing communications services; (vii) charges for property or other
456 services that are not part of the sale of communications services, if the charges are stated separately
457 from the charges for communications services; (viii) sales for resale; and (ix) charges for
458 communications services to the Commonwealth, any political subdivision of the Commonwealth, and the
459 federal government and any agency or instrumentality of the federal government.

460 C. Communications services on which the tax is hereby levied shall not include the following: (i)
461 information services; (ii) installation or maintenance of wiring or equipment on a customer's premises;
462 (iii) the sale or rental of tangible personal property; (iv) the sale of advertising, including but not
463 limited to, directory advertising; (v) bad check charges; (vi) billing and collection services; (vii) Internet
464 access service, electronic mail service, electronic bulletin board service, or similar services that are
465 incidental to Internet access, such as voice-capable e-mail or instant messaging; (viii) digital products
466 delivered electronically, such as software, downloaded music, ring tones, and reading materials; and
467 (ix) over-the-air radio and television service broadcast without charge by an entity licensed for such
468 purposes by the Federal Communications Commission.

469 § 58.1-649. Sourcing rules for communication services.

470 A. Except for the defined communication services in subsection C, the sale of communications service
471 sold on a call-by-call basis shall be sourced to the Commonwealth when the call (i) originates and
472 terminates in the Commonwealth, or (ii) either originates or terminates in the Commonwealth and the
473 service address is also located in the Commonwealth.

474 B. Except for the defined communication services in subsection C, a sale of communication services
475 sold on a basis other than a call-by-call basis, shall be sourced to the customer's place of primary use.

476 C. The sale of the following communication services shall be sourced to the Commonwealth as
477 follows:

478 1. Subject to the definitions and exclusions of the federal Mobile Telecommunications Sourcing Act, 4
479 U.S.C. § 116, a sale of mobile communication services shall be sourced to the customer's place of
480 primary use.

481 2. A sale of post-paid calling service shall be sourced to the origination point of the communications
482 signal as first identified by either (i) the seller's communications system, or (ii) information received by
483 the seller from its service provider, where the system used to transport such signals is not that of the
484 seller.

485 3. A sale of a private communications service shall be sourced as follows:

486 (a) Service for a separate charge related to a customer channel termination point shall be sourced to
487 each jurisdiction in which such customer channel termination point is located;

488 (b) Service where all customer termination points are located entirely within one jurisdiction shall be
489 sourced to such jurisdiction in which the customer channel termination points are located;

(c) Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segments of a channel are separately charged shall be sourced 50 percent to each jurisdiction in which the customer channel termination points are located; and

(d) Service for segments of a channel located in more than one jurisdiction and which segments are not separately billed shall be sourced in each jurisdiction based on a percentage determined by dividing the number of customer channel termination points in each jurisdiction by the total number of customer channel termination points.

§58.1-650. Bundled transaction of communications services.

A. For purposes of this chapter, a bundled transaction of communications services includes communications services taxed under this chapter and consists of distinct and identifiable properties, services, or both, sold for one non-itemized charge for which the tax treatment of the distinct properties and services is different.

B. In the case of a bundled transaction described in subsection A, if the charge is attributable to services that are taxable and services that are nontaxable, the portion of the charge attributable to the nontaxable services shall be subject to tax unless the communications services provider can reasonably identify the nontaxable portion from its books and records kept in the regular course of business.

§ 58.1-651. Tax collectible by communication service providers; jurisdiction.

A. The tax levied by § 58.1-648 shall be collectible by all persons who are communications services providers, who have sufficient contact with the Commonwealth to qualify under subsection B, and are required to be registered under § 58.1-653. However, the communications services provider shall separately state the amount of the tax and add that tax to the sales price of the service. Thereafter, the tax shall be a debt from the customer to the communications services provider until paid and shall be recoverable at law in the same manner as other debts.

B. A communications services provider shall be deemed to have sufficient activity within the Commonwealth to require registration if he does any of the activities listed in § 58.1-612.

C. Nothing contained in this chapter shall limit any authority which this Commonwealth may enjoy under the provisions of federal law or an opinion of the United States Supreme Court to require the collection of communications sales and use taxes by any communications services provider.

§ 58.1-652. Customer remedy procedures for billing errors.

If a customer believes that an amount of tax, or an assignment of place of primary use or taxing jurisdiction included on a billing is erroneous, the customer shall notify the communications service provider in writing. The customer shall include in this written notification the street address for the customer's place of primary use, the account name and number for which the customer seeks a correction, a description of the error asserted by the customer, and any other information that the communications service provider reasonably requires to process the request. Within 60 days of receiving a notice under this section, the communications service provider shall review its records to determine the customer's taxing jurisdiction. If this review shows that the amount of tax or assignment of place of primary use or taxing jurisdiction is in error, the communications service provider shall correct the error and refund or credit the amount of tax erroneously collected from the customer for a period of up to two years. If this review shows that the amount of tax or assignment of place of primary use or taxing jurisdiction is correct, the communications service provider shall provide a written explanation to the customer. The procedures in this section shall be the first course of remedy available to customers seeking correction of assignment of place of primary use or taxing jurisdiction, or a refund of or other compensation for taxes erroneously collected by the communications service provider, and no cause of action based upon a dispute arising from such taxes shall accrue until a customer has reasonably exercised the rights and procedures set forth in this subsection.

§ 58.1-653. Communications services providers' certificates of registration; penalty.

A. Every person desiring to engage in or conduct business as a communications services provider in this Commonwealth shall file with the Tax Commissioner an application for a certificate of registration.

B. Every application for a certificate of registration shall set forth the name under which the applicant transacts or intends to transact business, the location of his place of business, and such other information as the Tax Commissioner may reasonably require.

C. When the required application has been made the Tax Commissioner shall issue to each applicant a certificate of registration. A certificate of registration is not assignable and is valid only for the person in whose name it is issued and for the transaction of the business designated therein.

D. Whenever a person fails to comply with any provision of this chapter or any rule or regulation relating thereto, the Tax Commissioner, upon a hearing after giving the non-compliant person 30 days' notice in writing, specifying the time and place of the hearing and requiring him to show cause why his certificate of registration should not be revoked or suspended, may revoke or suspend the certificate of registration held by that person. The notice may be personally served or served by registered mail directed to the last known address of the non-compliant person.

551 E. Any person who engages in business as a communications services provider in this
 552 Commonwealth without obtaining a certificate of registration, or after a certificate of registration has
 553 been suspended or revoked, shall be guilty of a Class 2 misdemeanor as shall each officer of a
 554 corporation which so engages in business as an unregistered communication services provider. Each
 555 day's continuance in business in violation of this section shall constitute a separate offense.

556 F. If the holder of a certificate of registration ceases to conduct his business, the certificate shall
 557 expire upon cessation of business, and the certificate holder shall inform the Tax Commissioner in
 558 writing within 30 days after he has ceased to conduct business. If the holder of a certificate of
 559 registration desires to change his place of business, he shall so inform the Tax Commissioner in writing
 560 and his certificate shall be revised accordingly.

561 G. This section shall also apply to any person who engages in the business of furnishing any of the
 562 things or services taxable under this chapter. Moreover, it shall apply to any person who is liable only
 563 for the collection of the use tax.

564 § 58.1-654. Returns by communications services providers; payment to accompany return.

565 A. Every communications services provider required to collect or pay the sales or use tax shall, on
 566 or before the twentieth day of the month following the month in which the tax is billed, transmit to the
 567 Tax Commissioner a return showing the sales price, or cost price, as the case may be, and the tax
 568 collected or accrued arising from all transactions taxable under this chapter. In the case of
 569 communications services providers regularly keeping books and accounts on the basis of an annual
 570 period which varies 52 to 53 weeks, the Tax Commissioner may make rules and regulations for
 571 reporting consistent with such accounting period.

572 A sales or use tax return shall be filed by each registered communications services provider even
 573 though the communications services provider is not liable to remit to the Tax Commissioner any tax for
 574 the period covered by the return.

575 B. At the time of transmitting the return required under subsection A, the communications services
 576 provider shall remit to the Tax Commissioner the amount of tax due after making appropriate
 577 adjustments for accounts uncollectible and charged off as provided in §§ 58.1-655. The tax imposed by
 578 this chapter shall, for each period, become delinquent on the twenty-first day of the succeeding month if
 579 not paid.

580 § 58.1-655. Bad debts.

581 In any return filed under the provisions of this chapter, the communications services provider may
 582 credit, against the tax shown to be due on the return, the amount of sales or use tax previously returned
 583 and paid on accounts which are owed to the communications services provider and which have been
 584 found to be worthless within the period covered by the return. The credit, however, shall not exceed the
 585 amount of the uncollected payment determined by treating prior payments on each debt as consisting of
 586 the same proportion of payment, sales tax and other nontaxable charges as in the total debt originally
 587 owed to the communications services provider. The amount of accounts for which a credit has been
 588 taken that are thereafter in whole or in part paid to the communications services provider shall be
 589 included in the first return filed after such collection.

590 § 58.1-656. Discount.

591 For the purpose of compensating a communications services provider holding a certificate of
 592 registration under § 58.1-653 for accounting for and remitting the tax levied by this chapter, a
 593 communications services provider shall be allowed the following percentages of the first three percent of
 594 the tax levied by §§ 58.1-648 and accounted for in the form of a deduction in submitting his return and
 595 paying the amount due by him if the amount due was not delinquent at the time of payment.

596 Monthly Taxable Sales	Percentage
597 \$ 0 to \$62,500	4%
598 \$ 62,501 to \$208,000	3%
599 \$ 208,001 and above	2%

600 The discount allowed by this section shall be computed according to the schedule provided,
 601 regardless of the number of certificates of registration held by a communications services provider.

602 § 58.1-657. Sales presumed subject to tax; exemption certificates; Internet access service providers.

603 A. All sales are subject to the tax until the contrary is established. The burden of proving that a sale
 604 of communications services is not taxable is upon the communications services provider unless he takes
 605 from the taxpayer a certificate to the effect that the property is exempt under this chapter.

606 B. The exemption certificate mentioned in this section shall relieve the person who obtains such a
 607 certificate from any liability for the payment or collection of the tax, except upon notice from the Tax
 608 Commissioner that the certificate is no longer acceptable. The exemption certificate shall be signed,
 609 manually or electronically, by and bear the name and address of the taxpayer; shall indicate the
 610 number of the certificate of registration, if any, issued to the taxpayer; shall indicate the general
 611 character of the communications services sold or to be sold under a blanket exemption certificate; and

shall be substantially in the form as the Tax Commissioner may prescribe.

C. In the case of a provider of Internet access service that purchases a telecommunications service to provide Internet access, the Internet access provider shall give the communications service provider a certificate of use containing its name, address and signature, manually or electronically, of an officer of the Internet access service provider. The certificate of use shall state that the purchase of telecommunications service is being made in its capacity as a provider of Internet access in order to provide such access. Upon receipt of the certificate of use, the communications service provider shall be relieved of any liability for the communications sales and use tax related to the sale of telecommunications service to the Internet access service provider named in the certificate. In the event the provider of Internet access uses the telecommunications service for any taxable purpose, that provider shall be liable for and pay the communications sales and use tax directly to the Commonwealth in accordance with § 58.1-658.

D. If a taxpayer who holds a certificate under this section and makes any use of the property other than an exempt use or retention, demonstration, or display while holding the communications service for resale in the regular course of business, such use shall be deemed a taxable sale by the taxpayer as of the time the service is first used by him, and the cost of the property to him shall be deemed the sales price of such retail sale.

§ 58.1-658. Direct payment permits.

A. Notwithstanding any other provision of this chapter, the Tax Commissioner may authorize a person who uses taxable communications services within this Commonwealth to pay any tax levied by this chapter directly to this Commonwealth and waive the collection of the tax by the communications services provider. No such authority shall be granted or exercised except upon application to the Tax Commissioner and issuance by the Tax Commissioner of a direct payment permit. If a direct payment permit is issued, then payment of the communications sales and use tax on taxable communications services shall be made directly to the Tax Commissioner by the permit holder.

B. On or before the twentieth day of each month every permit holder shall file with the Tax Commissioner a return for the preceding month, in a form prescribed by the Tax Commissioner, showing the total value of the taxable communications services so used, the amount of tax due from the permit holder, which amount shall be paid to the Tax Commissioner with the submitted return, and other information as the Tax Commissioner deems reasonably necessary. The Tax Commissioner, upon written request by the permit holder, may grant a reasonable extension of time for filing returns and paying the tax. Interest on the tax shall be chargeable on every extended payment at the rate determined in accordance with § 58.1-15.

C. A permit granted pursuant to this section shall continue to be valid until surrendered by the holder or cancelled for cause by the Tax Commissioner.

D. A person holding a direct payment permit that has not been cancelled shall not be required to pay the tax to the communications services provider as otherwise required by this chapter. Such persons shall notify each communications services provider from whom purchases of taxable communications services are made of their direct payment permit number and that the tax is being paid directly to the Tax Commissioner. Upon receipt of notice, a communications services provider shall be absolved from all duties and liabilities imposed by this chapter for the collection and remittance of the tax with respect to sales of taxable communications services to the direct payment permit holder. Communications services providers who make sales upon which the tax is not collected by reason of the provisions of this section shall maintain records in a manner that the amount involved and identity of each purchaser may be ascertained.

E. Upon the cancellation or surrender of a direct payment permit, the provisions of this chapter, without regard to this section, shall thereafter apply to the person who previously held the direct payment permit, and that person shall promptly notify in writing communications services providers from whom purchases of taxable communications services are made of such cancellation or surrender. Upon receipt of notice, the communications services provider shall be subject to the provisions of this chapter, without regard to this section, with respect to all sales of taxable communications services thereafter made to the former direct payment permit holder.

§ 58.1-659. Collection of tax; penalty.

The tax levied by this chapter shall be collected and remitted by the communications services provider, but the communications services provider shall separately state the amount of the tax and add such tax to the sales price or charge. Thereafter, the tax shall be a debt from the customer to the communications services provider until paid and shall be recoverable at law in the same manner as other debts.

B. Notwithstanding any exemption from taxes which any communications services provider now or hereafter may enjoy under the Constitution or laws of this Commonwealth, or any other state, or of the United States, a communications services provider shall collect the tax from the customer of taxable

673 communications services and shall remit the same to the Tax Commissioner as provided by this chapter.

674 C. Any communications services provider collecting the communications sales or use tax on
675 transactions exempt or not taxable under this chapter shall remit to the Tax Commissioner such
676 erroneously or illegally collected tax unless or until he can affirmatively show that the tax has been
677 refunded to the customer or credited to his account.

678 D. Any communications services provider who intentionally neglects, fails, or refuses to collect the
679 tax upon every taxable sale of communications services made by him, or his agents or employees on his
680 behalf, shall be liable for and pay the tax himself. Moreover, any communications services provider who
681 intentionally neglects, fails, or refuses to pay or collect the tax herein provided, either by himself or
682 through his agents or employees, shall be guilty of a Class 1 misdemeanor.

683 All sums collected by a communications services provider as required by this chapter shall be
684 deemed to be held in trust for the Commonwealth.

685 § 58.1-660. Sale of business.

686 If any communications services provider liable for any tax, penalty, or interest levied by this chapter
687 sells his business or stock of goods or quits the business, he shall make a final return and payment
688 within 15 days after the date of selling or quitting the business. His successors or assigns, if any, shall
689 withhold a sufficient amount of the purchase money to cover taxes, penalties, and interest due and
690 unpaid until the former owner produces a receipt from the Tax Commissioner showing that all taxes,
691 penalties, and interest have been paid or a certificate stating that no taxes, penalties, or interest are
692 due. If the purchaser of a business or stock of goods fails to withhold the purchase money as required
693 above, he shall be personally liable for the payment of the taxes, penalties, and interest due and unpaid
694 that were incurred by the business operation of the former owner. In no event, however, shall the tax,
695 penalties and interest due by the purchaser be more than the purchase price paid for the business or
696 stock of goods.

697 § 58.1-661. Certain provisions in Chapter 6 of this title to apply, mutatis mutandis.

698 The provisions in §§ 58.1-630 through 58.1-637 of this title shall apply to this chapter, mutatis
699 mutandis, except as herein provided and except that whenever the term "dealer" is used in these
700 sections, the term "communications services provider" shall be substituted. The Tax Commissioner shall
701 promulgate regulations to interpret and clarify the applicability of §§ 58.1-630 through 58.1-637 to this
702 chapter.

703 § 58.1-662. Disposition of communications sales and use tax revenue; Communications Sales and
704 Use Tax Trust Fund; localities' share.

705 A. There is hereby created in the Department of the Treasury a special nonreverting fund which
706 shall be known as the Communications Sales and Use Tax Trust Fund. The Communications Sales and
707 Use Tax Trust Fund shall be established on the books of the Comptroller and any funds remaining in
708 such Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund.
709 Interest earned on the funds shall be credited to the Fund. After transferring moneys from the Fund to
710 the Department of Taxation to pay for the direct costs of administering this chapter, the moneys in the
711 Fund shall be allocated to the Commonwealth's counties, cities and towns, and distributed in
712 accordance with subsection C, after the payment (i) for the telephone relay service center is made to the
713 Department of Deaf and Hard-of-Hearing in accordance with the provisions of subsection § 51.5-115,
714 and (ii) of any franchise fee amount due to localities in accordance with any cable television franchise
715 agreements in effect as of July 1, 2006.

716 B. The localities' share of the net revenue distributable under this section among the counties, cities
717 and towns shall be apportioned by the Tax Commissioner and distributed as soon as practicable after
718 the close of each month during which the net revenue was received into the Fund. The distribution of
719 the localities' share of such net revenue shall be computed with respect to the net revenue received in
720 the state treasury during each month.

721 C. The net revenue distributable among the counties, cities and towns shall be apportioned and
722 distributed as follows:

723 1. a. During the first year in which distributions are made from the Fund, any town with a
724 population of less than 500 shall receive \$2,000 annually; any town with a population of at least 500
725 but no more than 1,499 shall receive \$5,000 annually; any town with a population of at least 1,500 but
726 no more than 3,500 shall receive \$10,000 annually; any towns with a population in excess of 3,500 that
727 received no funds in fiscal year 2004 and are not eligible for any of the distribution in subdivision 1 b
728 shall receive \$12,500 annually.

729 b. The remainder of the Fund, after the distribution under subdivision 1.a, shall be divided among
730 the counties, cities and remaining towns with populations in excess of 3,500 according to the percentage
731 of telecommunications and television cable funds (local consumer utility tax on landlines and wireless,
732 E-911, business license tax in excess of 0.5 percent, cable franchise fee, video programming excise tax,
733 local consumer utility tax on cable television) they received in Fiscal Year 2005 from local tax rates
734 adopted on or before July 1, 2003. An amount equal to the total franchise fee paid to each locality with

a cable franchise existing on the enactment date of this section at the rate in existence on July 1, 2006 shall be subtracted from the amount owed to such locality prior to the distribution of moneys from the Fund.

Each of the amounts in this subdivision shall be referred to as base distribution amounts from the Fund.

2. Distributions made from the Fund in year two and each year thereafter in which the Fund revenues increase shall begin with the base distribution amount determined in accordance with subdivision 1.

a. The base distribution amount for each town referred to in subdivision 1 a shall be increased by the same percentage that the Fund revenues increased over the previous year.

b. The remaining increase shall be distributed among all counties, cities, and each remaining town with a population in excess of 3,500 in the same manner as the first year. Each such county, city and town shall receive a portion of the increase based on the percentage of telecommunications and television cable funds it received in Fiscal Year 2005 from tax rates adopted on or before July 1, 2003.

3. Distributions made from the Fund in year two and each year thereafter in which the Fund's revenues decrease from one year to the next shall begin with the base distribution amount determined in accordance with subdivision 1.

a. The base distribution amount for each town referred to in subdivision 1a shall be decreased by the same percentage that the Fund revenues decreased from the previous year.

b. The remainder of the Fund shall be divided among the counties, cities and each remaining town with a population in excess of 3,500 according to the percentage of telecommunications and television cable funds it received in Fiscal Year 2005 from tax rates adopted on or before July 1, 2003.

D. For the purposes of the Comptroller making the required transfers, the Tax Commissioner shall make a written certification to the Comptroller no later than the twenty-fifth of each month certifying the communications sales and use tax revenues generated in the preceding month. Within three calendar days of receiving such certification, the Comptroller shall make the required transfers to the Communications Sales and Use Tax Trust Fund.

E. If errors are made in any distribution, or adjustments are otherwise necessary, the errors shall be corrected and adjustments made in the distribution for the next month or for subsequent months.

Article 7.

E-911 Tax.

§ 58.1-1730. Tax for enhanced 911 service; definitions.

A. As used in this section, unless the context requires a different meaning:

"Access lines" are defined to include residence and business telephone lines and other switched (packet or circuit) lines connecting the customer premises to the public switched telephone network for the transmission of outgoing voice-grade capable telecommunications services. Centrex, PBX or other multi-station telecommunications services will incur an E-911 tax charge on every line or trunk (Network Access Registrar or PBX trunk) that allows simultaneous unrestricted outward dialing to the public switched telephone network. ISDN Primary Rate Interface services will be charged five E-911 tax charges for every ISDN Primary Rate Interface network facility established by the customer. Other channelized services in which each voice grade channel is controlled by the telecommunications provider shall be charged one tax for each line that allows simultaneous unrestricted outward dialing to the public switched telephone network. Access lines do not include local, state, and federal government lines; access lines used to provide service to users as part of the Virginia Universal Service Plan; interstate and intrastate dedicated WATS lines; special access lines; off-premises extensions; official lines internally provided and used by providers of telecommunications services for administrative, testing, intercept, coin, and verification purposes; and commercial mobile radio service.

"Automatic location identification" or "ALI" means a telephone network capability that enables the automatic display of information defining the geographical location of the telephone used to place a wireline 9-1-1 call.

"Automatic number identification" or "ANI" means a telephone network capability that enables the automatic display of the telephone number used to place a wireline 9-1-1 call.

"Centrex" means a business telephone service offered by a local exchange company from a local central office; a normal single line telephone service with added custom calling features including but not limited to intercom, call forwarding, and call transfer.

"Communications services provider" means the same as provided in § 58.1-647.

"Enhanced 9-1-1 service" or "E-911" means a service consisting of telephone network features and PSAPs provided for users of telephone systems enabling users to reach a PSAP by dialing the digits "9-1-1." Such service automatically directs 9-1-1 emergency telephone calls to the appropriate PSAPs by selective routing based on the geographical location from which the emergency call originated, and provides the capability for ANI and ALI features.

796 "ISDN Primary Rate Interface" means 24 bearer channels, each of which is a full 64,000 bits per
797 second. One of the channels is generally used to carry signaling information for the 23 other channels.

798 "Network Access Register" means a central office register associated with Centrex service that is
799 required in order to complete a call involving access to the public switched telephone network outside
800 the confines of that Centrex company. Network Access Register may be incoming, outgoing or two-way.

801 "PBX" means public branch exchange and is telephone switching equipment owned by the customer
802 and located on the customer's premises.

803 "PBX trunk" means a connection of the customer's PBX switch to the central office.

804 "Public safety answering point" or "PSAP" means a communications facility equipped and staffed on
805 a 24-hour basis to receive and process 911 calls.

806 B. There is hereby imposed a monthly tax of \$0.75 on the end user of each access line of the
807 telephone service or services provided by a communications services provider. However, no such tax
808 shall be imposed on federal, state and local government agencies or on consumers of CMRS, as that
809 term is defined in § 56-484.12. The revenues shall be collected and remitted monthly by the
810 communications services provider to the Department and deposited into the Communications Sales and
811 Use Tax Trust Fund. This tax shall be subject to the notification and jurisdictional provisions of
812 subsection C.

813 C. If a customer believes that an amount of tax or an assignment of place of primary use or taxing
814 jurisdiction included on a billing is erroneous, the customer shall notify the communications services
815 provider in writing. The customer shall include in this written notification the street address for the
816 customer's place of primary use or taxing jurisdiction, the account name and number for which the
817 customer seeks a correction, a description of the error asserted by the customer, and any other
818 information that the communications services provider reasonably requires to process the request.
819 Within 60 days of receiving a notice under this section, the communications services provider shall
820 review its records to determine the customer's taxing jurisdiction. If this review shows that the amount
821 of tax or assignment of place of primary use or taxing jurisdiction is in error, the communications
822 services provider shall correct the error and refund or credit the amount of tax erroneously collected
823 from the customer for a period of up to two years. If this review shows that the amount of tax or
824 assignment of place of primary use or taxing jurisdiction is correct, the communications services
825 provider shall provide a written explanation to the customer. The procedures in this section shall be the
826 first course of remedy available to customers seeking correction of assignment of place of primary use
827 or taxing jurisdiction, or a refund of or other compensation for taxes erroneously collected by the
828 communications services provider, and no cause of action based upon a dispute arising from such taxes
829 shall accrue until a customer has reasonably exercised the rights and procedures set forth in this
830 subsection.

831 For the purposes of this subsection, the terms "customer" and "place of primary use" shall have the
832 same meanings provided in § 58.1- 647.

833 D. For the purpose of compensating a communications services provider for accounting for and
834 remitting the tax levied by this section, each communications services provider shall be allowed three
835 percent of the amount of tax revenues due and accounted for in the form of a deduction in submitting
836 the return and remitting the amount due.

837 § 58.1-3815. Consumer taxes upon lessees of certain property.

838 Any county, city or town authorized to levy and collect consumer utility taxes as provided in
839 ~~§§ 58.1-3812 and~~ § 58.1-3814 may levy such taxes upon and collect them from the occupant or lessee of
840 any premises, title to which is held by (i) a person whose property is tax exempt under Chapter 36
841 (§ 58.1-3600 et seq.) of this title, or (ii) by a person who is exempt from license taxation by virtue of
842 § 58.1-2508. Such taxes shall be applied to the utility services purchased by such person and furnished
843 at such premises for the use and benefit of such occupant or lessee. Such taxes may be fixed at a
844 specific amount per rental unit or other base or measured in some other manner as the county, city or
845 town levying such taxes may prescribe. This section shall not be construed to empower any county, city
846 or town to impose such taxes upon (i) the Commonwealth or any of its political subdivisions or
847 agencies of either, or (ii) the federal government or any of its agencies, or (iii) any person who by law
848 is exempt therefrom.

849 § 58.1-3816.2. Exemptions from consumer utility taxes.

850 The governing body of any county, city or town may exempt utilities consumed on all property that
851 has been designated or classified as exempt from property taxes pursuant to Article X, Section 6 (a) (2)
852 or Article X, Section 6 (a) (6) of the Constitution of Virginia, from the consumer utility taxes that may
853 be imposed under this article.

854 Any county, city, or town providing such exemption for the tax imposed by ~~§ 58.1-3812~~ shall
855 provide the telephone account numbers of all exempted organizations to all service providers required to
856 collect the tax as part of the notice required pursuant to subsection B of ~~§ 58.1-3812~~. No exemption
857 shall apply to the ~~E-911~~ tax imposed by ~~§ 58.1-3813.1~~.

858 2. That §§ 56-484.4, 56-484.5, 56-484.6, 58.1-3812, 58.1-3813.1, and § 58.1-3818.1 through
859 58.1-3818.7 of the Code of Virginia and the third enactment clause of Chapter 858 of the 1972
860 Acts of Assembly are repealed, notwithstanding any contrary provision of a local charter or other
861 special act.

862 3. That the local consumer utility tax imposed on franchised cable services, local
863 telecommunications services, and local mobile telecommunications are repealed, notwithstanding
864 any contrary provision of any local charter , special act or general law.

865 4. That all taxes and fees imposed in accordance with the provisions of any Code of Virginia
866 section or any local charter that are repealed or otherwise amended by this act and that remain
867 unpaid as of the July 1, 2006, shall be subject to payment and collection in accordance with any
868 administrative or judicial remedies existing prior or subsequent to this act's enactment and any
869 bad debt associated with such taxes and fees that occurs after July 1, 2006 shall be offset against
870 revenues collected from the Communications Sales and Use Tax.

871 5. That any funds held by the State Corporation Commission for the Telephone Services Relay
872 Center as of July 1, 2006, shall be transferred to the Communications Sales and Use Tax Trust
873 Fund.

874 6. That the Auditor of Public Accounts shall determine the amount of revenues received by every
875 county, city, and town that is included in the annual APA's Comprehensive Revenue Report, for
876 the fiscal year commencing July 1, 2004, and ending June 30, 2005, at rates adopted on or before
877 July 1, 2003, for each of the following taxes and fees collected by the service providers: the gross
878 receipts tax in excess of 0.5 percent; the local consumer utility tax, video program excise tax, cable
879 franchise fee, and the 911 taxes and fees, where they are collected. Local governments and service
880 providers shall cooperate with the Auditor of Public Accounts and provide information to him as
881 requested. The Auditor or his agent shall not divulge any information acquired by him in the
882 performances of his duties under this section that may identify specific service providers. The
883 Auditor shall report his findings on a tax-by-tax basis to the chairmen of the House and Senate
884 Finance Committees and the Department of Taxation no later than December 1, 2005.

885 7. That the provisions of the fifth enactment of this act shall be effective beginning on July 1,
886 2005, and the remaining provisions of this act, with the exception of § 58.1-656, shall be effective
887 beginning on July 1, 2006.

888 8. Section 58.1-656 shall become effective on the first day of the month following 60 days after the
889 Auditor of Public Accounts certifies that the taxes and fees collected in the fiscal year under the
890 provisions of the act are at least equal to the amount of taxes and fees revenue collected for the
891 taxes and fees repealed or amended by this act for the fiscal year ending June 30, 2004, at the tax
892 rates that were adopted on or before July 1, 2003, plus the annual cost to the Department of
893 Taxation to pay for the administration of the Virginia Communications Sales and Use Tax. The
894 APA certification shall be completed within 60 days after the end of the fiscal year.

895 9. That if any of the provisions of this act are declared invalid in a non-appealable court order,
896 then the remaining provisions of this act shall be invalid and the provisions of §§ 15.2-2108,
897 56-468.1, 56-484.4, 56-484.5, 56-484.6, 56-484.12, 58.1-3812, 58.1-3813.1, 58.1-3815, 58.1-3816.2, and
898 58.1-3818.1 through 58.1-3818.7 of the Code of Virginia and the third enactment clause of Chapter
899 858 of the 1972 Acts of Assembly as they were in effect immediately prior to the effective date of
900 this act shall be given effect beginning 90 days after the non-appealable court order is issued.